

# UNITED STATES MARSHALS SERVICE IMPROVEMENT ACT OF 1999

NOVEMBER 8, 1999.—Committed to the Committee of the Whole House on the State of the Union and ordered to be printed

Mr. MCCOLLUM, from the Committee on the Judiciary,  
submitted the following

## R E P O R T

[To accompany H.R. 2336]

[Including cost estimate of the Congressional Budget Office]

The Committee on the Judiciary, to whom was referred the bill (H.R. 2336) amending title 28, United States Code, to provide for appointment of United States marshals by the Attorney General, having considered the same, reports favorably thereon with an amendment and recommends that the bill as amended do pass.

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The amendment is as follows:

Strike out all after the enacting clause and insert in lieu thereof the following:

**SECTION 1. SHORT TITLE.**

This Act may be cited as the “United States Marshals Service Improvement Act of 1999”.

**SEC. 2. APPOINTMENTS OF MARSHALS.**

(a) **IN GENERAL.**—Chapter 37 of title 28, United States Code, is amended—

(1) in section 561(c)—

(A) by striking “The President shall appoint, by and with the advice and consent of the Senate,” and inserting “The Attorney General shall appoint”; and

(B) by inserting “United States marshals shall be appointed subject to the provisions of title 5 governing appointments in the competitive civil service, and shall be paid in accordance with the provisions of chapter 51 and subchapter III of chapter 53 of such title relating to classification and pay rates.” after the first sentence;

(2) by striking subsection (d) of section 561;

(3) by redesignating subsections (e), (f), (g), (h), and (i) of section 561 as subsections (d), (e), (f), (g), and (h), respectively; and

(4) by striking section 562.

(b) **CLERICAL AMENDMENT.**—The table of sections at the beginning of chapter 37 of title 28, United States Code, is amended by striking the item relating to section 562.

**SEC. 3. TRANSITIONAL PROVISIONS; PRESIDENTIAL APPOINTMENT OF CERTAIN UNITED STATES MARSHALS.**

(a) **INCUMBENT MARSHALS.**—Notwithstanding the amendments made by this Act, each marshal appointed under chapter 37 of title 28, United States Code, before the date of the enactment of this Act shall, unless that marshal resigns or is removed by the President, continue to perform the duties of that office until the expiration of that marshal’s term and the appointment of a successor.

(b) **VACANCIES AFTER ENACTMENT.**—Notwithstanding the amendments made by this Act, with respect to the first vacancy which occurs in the office of United States marshal in any district, during the period beginning on the date of the enactment of this Act and ending on December 31, 2001, the President shall appoint, by and with the advice and consent of the Senate, a marshal to fill that vacancy for a term of 4 years. Any marshal appointed by the President under this subsection shall, unless that marshal resigns or is removed from office by the President, continue to perform the duties of that office after the end of the four-year term to which such marshal was appointed or until a successor is appointed.

**SEC. 4. STUDY BY GENERAL ACCOUNTING OFFICE.**

The General Accounting Office shall conduct a study detailing the number of United States marshals chosen by the Attorney General who are people of color and women, and report to Congress the results of that study within one year after the effective date of this Act.

**PURPOSE AND SUMMARY**

Under current law, United States Marshals are appointed by the President, by and with the advice and consent of the Senate. In many instances, these appointed Marshals lack the law enforcement experience and qualifications necessary for discharging the sensitive and varied demands of the position of U.S. Marshal. There are no mandated requirements to become a U.S. Marshal, and the only training a newly appointed Marshal receives is a 40-hour orientation session.

H.R. 2336, the “United States Marshals Service Improvement Act of 1999,” will change the selection process of United States Marshals from that of appointment by the President with the advice and consent of the Senate, to appointment by the Attorney General. United States Marshals will be selected on a competitive

basis from among the career managers within the Marshals Service and other Federal law enforcement agencies.

Incumbent U.S. Marshals, selected before enactment of H.R. 2336, will continue to perform the duties of their office until their terms expire and successors are appointed. Marshals selected between the enactment of this bill and December 31, 2001, will still be appointed by the President, with the advice and consent of the Senate. They will serve a four year term, unless they resign or are removed by the President.

#### BACKGROUND AND NEED FOR THE LEGISLATION

The U.S. Marshals Service is the nation's oldest Federal law enforcement agency. Since 1789, U.S. Marshals have been involved in a variety of vital law enforcement activities including protection of the Federal judiciary and Federal witnesses, apprehension of Federal fugitives, management and disposal of seized and forfeited properties, transportation of prisoners and hundreds of other special operations projects.

Currently, there is no criteria for the selection of a U.S. Marshal. Past Marshals have included a phone company employee, a children's television show host, a coroner, and a pig farmer. The lack of professional standards for the position of U.S. Marshal makes it possible for persons with a similar lack of qualifications to be appointed. Presently, approximately fifteen of the nation's 94 U.S. Marshals have previous experience as Deputy Marshals.

Once appointed, a U.S. Marshal is not subject to disciplinary action, short of removal by the President. A U.S. Marshal is not accountable to the Director of the Marshals Service, and cannot be demoted, suspended, or transferred. This lack of accountability has resulted in numerous problems, including budgetary irresponsibility among a few individual Marshals.

Under H.R. 2336, career Marshals will be subjected to the same disciplinary actions as the employees that they supervise. An ineffectual U.S. Marshal could be transferred or demoted, and the Director will finally have control over the entire U.S. Marshals Service.

Partly because of the lack of experience in law enforcement of many U.S. Marshals, the Marshals Service has created the position of Chief Deputy U.S. Marshal. As the Marshals Service is currently organized, these Chief Deputy Marshals are essential because they provided the requisite leadership in district offices. In turn, these Chief Deputy Marshals have Supervisory Deputy U.S. Marshals to assist them with daily activities.

But, partly as a result of creating these positions, the ratio of employees to managers in the U.S. Marshals Service nationwide is four to one—the highest ratio in Federal law enforcement. Because H.R. 2336 would professionalize the office of U.S. Marshal, by ensuring that only knowledgeable career managers could be considered for the position, there would no longer be a need for the surplus of middle managers who support the presently unprepared U.S. Marshals.

H.R. 2336 is supported by several former directors of the U.S. Marshals Service.

## HEARINGS

The committee's Subcommittee on Crime held no hearings on H.R. 2336. During the 104th Congress, the Subcommittee on Crime held a legislative hearing on H.R. 2641, the "United States Marshals Service Improvement Act of 1995," which is nearly identical to H.R. 2336. The subcommittee published a transcript of that hearing (Serial No. 40, part 2).

## COMMITTEE CONSIDERATION

On July 1, 1999, the Subcommittee on Crime met in open session and ordered reported favorably the bill H.R. 2336 without amendment, by a voice vote, a quorum being present. On July 20, 1999, the committee met in open session and ordered reported favorably the bill H.R. 2336, as amended, by voice vote, a quorum being present.

## VOTE OF THE COMMITTEE

Ms. Jackson Lee offered an amendment that would direct the General Accounting Office to "conduct a study detailing the number of U.S. Marshals chosen by the Attorney General who are people of color and women, and report to Congress the results of that study within one year after the date of the enactment of this Act." Mr. Nadler modified Ms. Jackson Lee's amendment by unanimous consent, substituting the words "effective date" for the words "date of enactment," and the amendment was agreed to by a voice vote. The Chairman moved to favorably report H.R. 2336, as amended, to the House. The motion was agreed to by a voice vote.

## COMMITTEE OVERSIGHT FINDINGS

In compliance with clause 3(c)(1) of rule XIII of the Rules of the House of Representatives, the committee reports that the findings and recommendations of the committee, based on oversight activities under clause 2(b)(1) of rule X of the Rules of the House of Representatives, are incorporated in the descriptive portions of this report.

## COMMITTEE ON GOVERNMENT REFORM FINDINGS

No findings or recommendations of the Committee on Government Reform and Oversight were received as referred to in clause 3(c)(4) of rule XIII of the Rules of the House of Representatives.

## NEW BUDGET AUTHORITY AND TAX EXPENDITURES

Clause 3(c)(2) of House Rule XIII is inapplicable because this legislation does not provide new budgetary authority or increased tax expenditures.

## CONGRESSIONAL BUDGET OFFICE COST ESTIMATE

In compliance with clause 3(c)(3) of rule XIII of the Rules of the House of Representatives, the committee sets forth, with respect to the bill, H.R. 2336, the following estimate and comparison prepared

by the Director of the Congressional Budget Office under section 403 of the Congressional Budget Act of 1974.

U.S. CONGRESS,  
CONGRESSIONAL BUDGET OFFICE,  
*Washington, DC, August 3, 1999.*

Hon. HENRY J. HYDE, *Chairman,*  
*Committee on the Judiciary,*  
*House of Representatives, Washington, DC.*

DEAR MR. CHAIRMAN: The Congressional Budget Office has prepared the enclosed cost estimate for H.R. 2336, the United States Marshals Service Improvement Act of 1999.

If you wish further details on this estimate, we will be pleased to provide them. The CBO staff contact is Susanne S. Mehlman, who can be reached at 226-2860.

Sincerely,

DAN L. CRIPPEN, *Director.*

*H.R. 2336—United States Marshals Service Improvement Act of 1999.*

CBO estimates that enacting H.R. 2336 would result in no significant cost or savings to the Federal Government. Because the bill would not affect direct spending or receipts, pay-as-you-go procedures would not apply. H.R. 2336 contains no intergovernmental or private-sector mandates as defined in the Unfunded Mandates Reform Act and would have no effect on State, local, or tribal governments.

Under current law, U.S. Marshals are appointed by the President with the advice and consent of the Senate, and many are compensated according to the executive level pay schedule. H.R. 2336 would enable the Attorney General to appoint U.S. Marshals beginning on January 1, 2002, and require that compensation for all U.S. Marshal positions be consistent with the general schedule pay rates. (Any vacancies occurring before January 1, 2002, would be filled as they are currently—by Presidential appointment.) Because those appointees subject to the general schedule pay rates would also be eligible for overtime pay, their total compensation would probably not differ on average by more than \$500 from the compensation currently provided to those U.S. Marshals who are receiving executive level pay. Currently, 26 U.S. Marshals receive executive level pay; thus, CBO estimates that any net savings realized would be less than \$15,000 each year beginning in fiscal year 2002.

H.R. 2336 also would require the General Accounting Office (GAO) to conduct a study detailing the number of U.S. Marshals chosen by the Attorney General who are women or people of color. Based on information from GAO, CBO estimates that completing this study would cost less than \$500,000, subject to the availability of appropriated funds.

The CBO staff contact for this estimate is Susanne S. Mehlman, who can be reached at 226-2860. This estimate was approved by Robert A. Sunshine, Deputy Assistant Director for Budget Analysis.

## CONSTITUTIONAL AUTHORITY STATEMENT

Pursuant to rule XIII, clause 3(d)(1) of the Rules of the House of Representatives, the committee finds the authority for this legislation in Article I, section 8 of the Constitution.

## SECTION-BY-SECTION ANALYSIS AND DISCUSSION

*Sec. 1. Short Title.*

This section states that the short title of the bill is the United States Marshals Service Improvement Act of 1999.

*Sec. 2. Appointments of Marshals.*

This section amends chapter 37 of title 28, United States Code, to provide for the appointment of United States Marshals by the Attorney General of the United States. Currently, United States Marshals are appointed by the President, by and with the advice and consent of the Senate. The section also provides that United States Marshals shall be appointed subject to the provisions of Title 5, United States Code, governing appointments in the competitive civil service, and shall be paid on the government service scale. As a result, only persons who are employed in the civil service of the United States—as are all Deputy U.S. Marshals—are eligible to be appointed as a U.S. Marshal.

*Sec. 3. Transitional Provisions; Presidential Appointment of Certain United States Marshals.*

The section directs that each United States Marshal appointed before enactment of this Act shall remain in that position until the term is completed and a successor is appointed. The section also provides that, during the period between the date of enactment of this Act and December 31, 2001, the President shall appoint U.S. Marshals with the advice and consent of the Senate. Under the bill, these Marshals will serve a four-year term, and will continue to serve after the four-year term expires until a successor is appointed. This section thus “grandfathers” the current U.S. Marshals, appointed by the President with the advice and consent of the Senate.

## AGENCY VIEWS

The committee did not receive any agency views regarding H.R. 2336, the United States Marshals Service Improvement Act of 1999, or on a virtually identical bill, HR. 927, the “United States Marshals Service Improvement Act of 1997,” which was introduced during the 105th Congress. The committee did receive views in the 104th Congress regarding H.R. 2641, the “United States Marshals Service Improvement Act of 1995,” which is nearly identical to H.R. 2336. The agency views received by the committee on H.R. 2641 are as follows:

U.S. DEPARTMENT OF JUSTICE,  
OFFICE OF LEGISLATIVE AFFAIRS,  
*Washington, DC, March 6, 1996.*

Hon. BILL MCCOLLUM, *Chairman,*  
*Subcommittee on Crime,*  
*Committee on the Judiciary,*  
*House of Representatives, Washington, DC.*

DEAR MR. CHAIRMAN: I am pleased to respond to your request for the Department of Justice's views on a number of bills the subcommittee will soon consider. Our views are provided below.

H.R. 2641—The United States Marshals Service Improvements Act.

H.R. 2641 would amend 28 U.S.C. § 561(c) to authorize the Director of the Marshals Service to appoint U.S. Marshals from the competitive civil service. Marshals thus would be career law enforcement officers who had risen through the ranks of the Marshals Service. The provision would take effect in the year 2000. Until that time, Marshals would continue to be appointed by the President with the advice and consent of the Senate as they have been since the earliest days of our nation.

We support the thrust of the bill, which is consistent with a recommendation from the National Performance Review. We would, however, note a constitutional concern with the specific language of H.R. 2641. The bill should provide for appointment of Marshals by the Attorney General rather than the Director of the Marshals Service. Courts have held that Marshals are "officers of the United States" in the constitutional sense. Under the Appointments Clause of the Constitution, such officers must be appointed by the President, courts of law, or heads of Departments.

Appointment of Marshals by the Attorney General would result in naming as Marshals persons who have demonstrated outstanding law enforcement and administrative expertise through a career in the Service. Although politically appointed Marshals have long served the National with dedication and integrity, today the multifaceted law enforcement missions of the Marshals Service—involving such matters as judicial security, fugitive apprehension, prisoner transportation, witness protection, and disposal of seized assets—require that its field offices, like those of other law enforcement agencies, be headed by career law enforcement officers.

Again, we are pleased to assist the subcommittee's consideration of these bills. Please do not hesitate to contract me if you need any additional assistance.

Sincerely,

ANDREW FOIS,  
*Assistant Attorney General.*

CHANGES IN EXISTING LAW MADE BY THE BILL, AS REPORTED

In compliance with clause 3(e) of rule XIII of the Rules of the House of Representatives, changes in existing law made by the bill, as reported, are shown as follows (existing law proposed to be omitted is enclosed in black brackets, new matter is printed in italics, existing law in which no change is proposed is shown in roman):

## CHAPTER 37 OF TITLE 28, UNITED STATES CODE

### CHAPTER 37—UNITED STATES MARSHALS SERVICE

Sec.  
561. United States Marshals Service.  
[562. Vacancies.]

\* \* \* \* \*

#### § 561. United States Marshals Service

(a) \* \* \*

\* \* \* \* \*

(c) [The President shall appoint, by and with the advice and consent of the Senate,] *The Attorney General shall appoint a United States marshal for each judicial district of the United States and for the Superior Court of the District of Columbia, except that any marshal appointed for the Northern Mariana Islands may at the same time serve as marshal in another judicial district. United States marshals shall be appointed subject to the provisions of title 5 governing appointments in the competitive civil service, and shall be paid in accordance with the provisions of chapter 51 and subchapter III of chapter 53 of such title relating to classification and pay rates.* Each United States marshal shall be an official of the Service and shall serve under the direction of the Director.

[(d) Each marshal shall be appointed for a term of four years. A marshal shall, unless that marshal has resigned or been removed by the President, continue to perform the duties of that office after the end of that 4-year term until a successor is appointed and qualifies.]

[(e)] (d) The Director shall designate places within a judicial district for the official station and offices of each marshal. Each marshal shall reside within the district for which such marshal is appointed, except that--

(1) the marshal for the District of Columbia, for the Superior Court of the District of Columbia, and for the Southern District of New York may reside within 20 miles of the district for which the marshal is appointed; and

(2) any marshal appointed for the Northern Mariana Islands who at the same time is serving as marshal in another district may reside in such other district.

[(f)] (e) The Director is authorized to appoint and fix the compensation of such employees as are necessary to carry out the powers and duties of the Service and may designate such employees as law enforcement officers in accordance with such policies and procedures as the Director shall establish pursuant to the applicable provisions of title 5 and regulations issued thereunder.

[(g)] (f) The Director shall supervise and direct the United States Marshals Service in the performance of its duties.

[(h)] (g) The Director may administer oaths and may take affirmations of officials and employees of the Service, but shall not demand or accept any fee or compensation therefor.

[(i)] (h) *There are authorized to be appropriated such sums as may be necessary to carry out the functions of the Service.*



**【§ 562. Vacancies**

【(a) In the case of a vacancy in the office of a United States marshal, the Attorney General may designate a person to perform the functions of and act as marshal, except that the Attorney General may not designate to act as marshal any person who was appointed by the President to that office but with respect to such appointment the Senate has refused to give its advice and consent.

【(b) A person designated by the Attorney General under subsection (a) may serve until the earliest of the following events:

【(1) The entry into office of a United States marshal appointed by the President, pursuant to section 561(c).

【(2) The expiration of the thirtieth day following the end of the next session of the Senate.

【(3) If such designee of the Attorney General is appointed by the President pursuant to section 561(c), but the Senate refuses to give its advice and consent to the appointment, the expiration of the thirtieth day following such refusal.】

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